

## Office of Thrift Supervision, Treasury

## § 563b.101

### *Exhibit 8. Business Plans*

(a) Furnish a consolidated business plan. The converting association shall provide, as part of the business plan, a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, any proposed stock repurchases.

(b) Applicant should follow § 563b.4(c) if the business plan is to be deemed confidential.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22735, May 3, 1994]

### **§ 563b.101 Form PS—Proxy Statements.**

#### FORM PS

[Facing Sheet]

#### OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, DC 20552

#### PROXY STATEMENT

(Exact name of Applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

#### PROXY STATEMENT FORM

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#### INFORMATION REQUIRED IN CONVERSION PROXY STATEMENT

##### *Notes*

1. Except as otherwise specifically provided, where any item calls for information for a specified period in regard to directors, officers or other persons holding specified positions or relationships, the information shall be given in regard to any person who held any of the specified positions or rela-

tionships at any time during the period. However, information need not be included for any portion of the period during which such person did not hold any such position or relationship provided a statement to that effect is made.

2. The proxy statement shall include such information which the Chief Counsel or the Deputy Chief Counsel for Securities and Corporate Structure by interpretative release or otherwise has deemed necessary to comply with items of this Form PS.

#### Item 1. Notice of Meeting

The cover page of the proxy statement shall give notice of the meeting of the association members called by the board of directors to act upon the conversion. The cover page shall include the date, time and place of the meeting, a brief description of each matter to be acted upon at the meeting, the date of record for association members entitled to vote at the meeting, the date of the statement and the full address, ZIP code and telephone number of the applicant.

In accordance with § 563b.5(d)(4) of this part, the applicant shall not use previously-executed proxies to vote on the plan of conversion.

#### Item 2. Revocability of Proxy

State that the person giving the proxy has the power to revoke it before the proxy is exercised at the meeting. If the right of revocation is subject to compliance with any formal procedure, briefly describe such procedure. Briefly describe any charter, bylaw or applicable Federal or State law requirements otherwise restricting voting by proxy. State that the proxy is solicited for that meeting, and any adjournment thereof, and will not be used for any other meeting. (See also § 563b.5(d)(3)).

#### Item 3. Persons Making the Solicitation

(a) State whether the solicitation is made by the management of the applicant. Give the name of any director of the applicant who has informed the management in writing that he or she intends to oppose any action intended to be taken by the management and indicate the action which he or she intends to oppose.

(b) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially engaged employees or paid solicitors, state the material features of any contract or arrangement for such solicitation and identify the parties.

(c) If the solicitation is made otherwise than by the management of the applicant, so state and give the names of the persons by whom and on whose behalf it is made. Any such solicitation normally need not respond to items 5 through 16, but must include such

information as to make such solicitations comply with § 563b.5(g)(1).

**Item 4. Voting Rights and Vote Required for Approval**

(a) Describe briefly the voting rights of each class of association members, state the approximate total number of votes entitled to be cast at the meeting, and the approximate number of votes to which each class is entitled. Discuss the voting rights of beneficiaries of accounts held in a fiduciary capacity such as IRA accounts.

(b) As part of the description give the date of record for association members entitled to vote at the meeting.

(c) As to each matter which will be submitted to a vote of association members, state the vote required for its approval.

(d) The applicant shall not use previously-executed proxies to vote on the plan of conversion.

**Item 5. Directors and Executive Officers**

(a) Furnish the information regarding directors and executive officers and certain relationships and related transactions required to be disclosed in a registration or proxy statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see items 401 and 404 of Regulation S-K, 17 CFR 229.401 and 404, and item 6 of Regulation 14A, 17 CFR 240.14a-101. Unless the context otherwise requires, the words “registrant” and “issuer” in those regulations shall refer to the applicant and the word “Commission” shall refer to the Office.

(b) State whether control of the applicant has been exercised through the use of proxies and the nature of such control.

**Item 6. Management Remuneration**

Furnish the information regarding management remuneration required to be disclosed in a registration or proxy statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see item 402 of Regulation S-K, 17 CFR 229.402, and item 7 of Regulation 14A, 17 CFR 240.14a-101. Unless the context otherwise requires, the words “registrant” and “Commission” in those regulations shall refer to the applicant and to the Office, respectively.

**Item 7. Business of the Applicant**

(a) *Narrative description of business.* (1) Discuss briefly the organizational history of the applicant, including the year of organization, the identity of the chartering authority, and any material charter conversions.

(2) Describe the business conducted and intended to be conducted by the applicant and its subsidiaries. This should include a description of the general development of the

business of the applicant and any predecessor(s) during the past five years, or such shorter period as the applicant may have been engaged in business. Information shall be disclosed for earlier periods if material to an understanding of the general development of the business. Any material changes in the mode of conducting the business should be discussed.

(3) Consideration should be given to inclusion of a description of the applicant's historical practices, including the average remaining term to maturity of its portfolio of mortgage loans, and present intention regarding the making of loans, whether real estate or other, the nature of security received, the terms of loans, whether carrying fixed or variable interest rates, and the retention of loans or their resale in secondary mortgage markets. Historical description might require a general identification of the magnitude of various activities.

(4) Also explain any significant impact to the association as a result of any material acquisitions.

(b) *Selected financial data.* Furnish in comparative columnar form a summary of selected financial data for the applicant for:

(1) Each of the last five fiscal years of the applicant (or for the life of the applicant and its predecessors, if less); and

(2) Any additional fiscal years necessary to keep the summary from being misleading.

*Instructions.* 1. The purpose of the summary of selected financial data shall be to supply in convenient and readable format selected data which highlight significant trends in the applicant's financial condition and results of operations.

2. Subject to appropriate variation to conform to the nature of the applicant's business, the following items, as a minimum, shall be included in the summary: Total interest income; total interest expense; income (loss) from continuing operations; net income; total loans; total investments; total assets; total savings; total borrowings; total regulatory capital; and total number of customer service facilities indicating the number which provide full service. Applicants may include additional items which they believe would enhance understanding and highlight trends in their financial condition and results of operations. Briefly describe, or cross reference to a discussion of, factors such as accounting changes, business combinations, or dispositions of business operations that materially affect the comparability of the information reflected in selected financial data. Discussion of, or reference to, any material uncertainties should also be included where those matters might cause the data reflected not to be indicative of the applicant's future financial condition or results of operations.

3. Those applicants which elect to provide five-year summary information in accordance with the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 89 ("SFAS 89") "Financial Reporting and Changing Prices," may combine such information with the selected financial data appearing pursuant to this item.

4. All references to the applicant in the summary and in these instructions shall mean the applicant and its consolidated subsidiaries.

5. If interim-period financial statements are included, or are required to be included by item 14, applicants should update the selected financial data for the interim period to reflect any material change in the trends indicated; where such updating information is necessary, applicants shall provide the information on a comparative basis unless not necessary to an understanding of the updating information.

(c) *Management's discussion and analysis of financial condition and results of operations.* (1) Discuss applicant's financial condition, changes in financial condition, and results of operations. The discussion shall provide information as specified in paragraphs (i), (ii), and (iii) of this paragraph with respect to liquidity, capital resources, and results of operations and also should provide all other information which the applicant believes to be necessary to an understanding of its financial condition, changes in financial condition, and results of operations. Significant business combinations should be discussed. Discussion of liquidity and capital resources may be combined whenever the two topics are interrelated. Where in the applicant's judgment a discussion of subdivisions of the applicant's business would be appropriate to an understanding of the business, the discussion should focus on each relevant, reportable segment or other subdivision of the business and on the applicant as a whole.

(i) *Liquidity.* Identify any known trends or any known demands, commitments, events, or uncertainties which will result in or which are reasonably likely to result in the applicant's liquidity increasing or decreasing in any material way. If a material deficiency is identified, indicate the course of action which the applicant has taken or proposes to take to remedy the deficiency. Identify and separately describe internal and external sources of liquidity, and briefly discuss any material unused sources of liquid assets. Comment on maturity imbalances between assets and liabilities and planned activities in the secondary mortgage market.

(ii) *Committed resources.* (A) Describe the applicant's material commitments for loan fundings or other expenditures as of the end of the latest fiscal period and indicate the general purpose of the commitments and the

anticipated source of funds needed to fulfill the commitments.

(B) Describe any known material trends, favorable or unfavorable, in the applicant's committed resources. Indicate any expected material changes in the mix and the relative cost of the resources. This discussion should consider changes between savings, equity, debt, and any off-balance-sheet financing arrangements.

(iii) *Results of operations.* (A) Describe any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount or reported income from continuing operations and, in each case, indicate the extent to which income was affected. In addition, describe any other significant components of revenues or expenses which, in the applicant's judgment, should be described in order to understand the applicant's results of operations.

(B) Describe any known trends or uncertainties which have had, or which the applicant reasonably expects will have, a materially favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the applicant knows of events which will cause a material change in the relationship between costs and revenues (such as known future increases in costs of money or interest rates) the change in the relationship should be disclosed.

(C) To the extent that the financial statements disclose material increases in interest expense, provide a narrative discussion of the extent to which the increases are attributable to increases in rates or to increases in volume.

(D) For the three most recent fiscal years of the applicant, or for those fiscal years in which the applicant has been engaged in business, whichever period is shorter, discuss the impact of inflation and changing prices on the applicant's revenues and on income from continuing operations.

(E) For the most recent financial statement presented, discuss any unusual risk characteristics in the assets of the applicant. This would include real estate development, significant amounts of commercial real estate as loan collateral, and any other significant risk factors inherent in the applicant's lending or investment portfolios, including significant increases in amounts of non-accrual, past due, restructured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III C).

*Instructions.* 1. The applicant's discussion and analysis shall be of the financial statements and of other statistical data which the applicant believes will enhance a reader's understanding of its financial condition, changes in financial condition, and results of operations. Generally, the discussion should cover the three-year period covered by the financial statements and should utilize year-

to-year comparisons or other formats which in the applicant's judgment enhance a reader's understanding. However, where trend information is relevant, reference to the five-year selected financial data appearing in item 7(b) above may be necessary.

2. The purpose of the discussion and analysis should be to provide to investors and other users information relevant to an assessment of the financial condition and results of operations of the applicant as determined by evaluating the amounts and certainty of cash flows from operations and from outside sources. The information provided in this item 7(c) need only include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's financial statements.

3. The discussion and analysis should specifically focus on material events and uncertainties known to management which would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include description and amounts of (a) matters which would have an impact on future operations and have not had an impact in the past, and (b) matters which have had an impact on reported operations and are not expected to have an impact upon future operations.

4. Where the consolidated financial statements reveal material changes from year to year in one or more line items, the causes for the changes should be described to the extent necessary to an understanding of the applicant's business as a whole; provided, however, if the causes for a change in one line item also relate to other line items, no repetition is required and a line-by-line analysis of the financial statements as a whole is not required or generally appropriate. Applicants need not recite the amounts of changes from year to year which are readily computable from the financial statements. The discussion should not merely repeat numerical data contained in the consolidated financial statements.

5. The term "liquidity" as used in paragraph (c)(1)(i) of this item 7 refers to the ability of an enterprise to generate adequate amounts of cash to meet the enterprise's needs for cash. Except where it is otherwise clear from the discussion, the applicant should indicate those balance sheet conditions or income or cash flow items which the applicant believes may be indicators of its liquidity condition. Liquidity generally should be discussed on both a long-term and short-term basis. The issue of liquidity should be discussed in the context of the applicant's own business or businesses. Liquidity does not necessarily mean "liquid assets" as defined in the liquidity regulations of the Office.

6. Applicants are encouraged, but not required, to supply forward-looking information. This is to be distinguished from presently known data which will have an impact upon future operating results, such as known future increases in rates or other costs. This latter data is required to be disclosed. Any forward-looking information supplied is hereby expressly covered by the safe-harbor rule for projections, § 563d.3b-6, under the circumstances specified in that rule.

7. Applicants which elect to provide narrative explanations of supplementary information disclosed in accordance with SFAS 89 may combine the explanations with their discussion and analysis required pursuant to this provision or they may supply the information separately. If the information is combined, it shall be located in reasonable proximity to the discussion and analysis. If the information is not combined, the discussion of the impact of inflation otherwise required by this item may be omitted if there is an appropriate cross reference to the explanations provided pursuant to SFAS 89.

8. Applicants which elect not to provide explanations of supplementary information disclosed in accordance with SFAS 89 may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. Although voluntary compliance with SFAS 89 is encouraged, all that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented.

9. All references to the applicant in the discussion and in these instructions shall mean the applicant and its consolidated subsidiaries.

(2) If interim-period financial statements are included or are required to be included by item 14, a management's discussion and analysis of the financial condition and results of operations shall be provided to enable the reader to assess material changes in financial condition and results of operations between the periods specified in subdivisions (i) and (ii) of this paragraph (2). The discussion and analysis shall include a discussion of material changes in those items specifically listed in paragraph (c)(1) of this item 7, except that the impact of inflation and changing prices on operations for interim periods need not be addressed.

(i) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material change in financial condition from that date to the date of the most recent interim balance sheet provided shall also be discussed. If discussions of changes from both

the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the applicant.

(ii) *Material changes in results of operations.* Discuss any material changes in the applicant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. If the applicant is required to or has elected to provide an income statement for the most recent fiscal year quarter, the discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the applicant has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion shall also cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

*Instructions.* 1. If interim financial statements are presented together with financial statements for full fiscal years, the discussion of the interim financial information shall be prepared pursuant to paragraph (c)(2) and the discussion of the full fiscal year information shall be prepared pursuant to paragraph (c)(1) of this item 7. Such discussions may be combined.

2. The discussion and analysis required by this paragraph (c)(2) is required to focus only on material changes. Where the interim financial statements reveal material change from period to period in one or more significant line items, the causes for the changes should be described if they have not already been disclosed; however, if the causes for a change in one line item also relate to other line items, no repetition is required. Applicants need not recite the amounts of changes from period to period which are readily computable from the financial statements. This discussion should not merely repeat numerical data contained in the financial statements. The information provided should include that which is available to the applicant without undue effort or expense and which does not clearly appear in the applicant's interim financial statements.

3. The applicant's discussion of material changes in results of operations should identify any significant elements of the applicant's income or loss from continuing operations which do not arise from or are not necessarily representative of the applicant's ongoing business.

4. Applicants are encouraged but are not required to discuss forward-looking information. Any forward-looking information supplied is expressly covered by the safe-harbor

rule for projections, § 563d.3b-6, under the circumstances specified in that rule.

(d) *Lending activities.* (1) Briefly describe the applicable Federal and State restrictions on the lending activities of the applicant, including applicable laws affecting mortgage loan interest rates. Also briefly describe the applicant's general policy concerning loan-to-value ratios; customary methods of obtaining loan originations, such as the use of loan consultants; approval of properties as security for loans; the use of a loan committee, if any; and policies as to requiring title, fire, and casualty insurance on security properties. Indicate the applicant's general future intentions with respect to activities in secondary mortgage markets, including transactions with the Federal Home Loan Mortgage Corporation or mortgage bankers. If significant, indicate loan service fee income as a percentage of net interest income for the years required by item 14(b).

(2) As to the lending area of the applicant, describe briefly (i) the lending area restrictions, if any, applicable to the applicant, (ii) the areas in which the applicant normally lends, and (iii) any material loan concentration areas of the applicant. The descriptions may include maps illustrating one or more of these areas. Furnish an estimate of the housing vacancy rates in areas where the applicant's loan concentrations are located, if practicable.

(3) Describe briefly the general long-term nature of investment in mortgage loans and the consequent effect upon the earnings spread of savings associations. State the normal maturity of loans made by the applicant on the security of single-family dwellings and furnish an estimate as to the average length of time the loans are outstanding.

(4) For each of the periods required by item 14(b), set forth in tabular form, excluding fees which are not considered adjustments of yield, the following:

(i) Average yield during the period on: (A) Loan portfolio, (B) investment portfolio, (C) other interest-earning assets, and (D) all interest earning assets. Average yield should be computed on no greater than a monthly basis.

(ii) Average rate paid during the period on: (A) Deposits, (B) borrowings and Federal Home Loan Bank advances, (C) other interest-bearing liabilities, (D) all interest-bearing liabilities ((A), (B), and (C)). Average rate paid should be computed on no greater than a monthly basis.

(iii) Weighted-average yield at end of the latest required period, for the items in items (i) and (ii) of paragraph (4).

(iv) The net yield on average interest-earning assets (net interest earnings divided by average interest-earning assets, with net interest earnings equaling the difference between the dollar amount of interest earned and paid). Average interest-earning assets

should be determined on an interval no more frequent than monthly.

(v) For each of the periods required by item 14(b), set forth in tabular form: (A) The dollar amount of change in interest income and (B) the dollar amount of change in interest expense. The changes should be segregated for each major category of interest-earning asset and interest-bearing liability (as stated in items (i) and (ii) of paragraph (4)) into amounts attributable to (1) changes in volume (change in volume multiplied by old rate), (2) changes in rates (change in rate multiplied by old volume), and (3) changes in rate-volume (change in rate multiplied by the change in volume). The rate/volume variances should be allocated on a consistent basis between rate and volume variance and the basis of allocation disclosed in a note to the table.

(5) For each of the periods required by item 14(b), present the following:

(i) Return on assets (net income divided by average total assets).

(ii) Return on equity (net income divided by average equity).

(iii) Equity-to-assets ratio (average equity divided by average total assets).

*Instructions.* Applicants should supply any additional ratios which they deem necessary to explain their operations.

(6) As of the end of the latest fiscal year reported on, present separately the amounts of loans in each category required by balance sheet item 7(b), § 563c.102, which are due: (i) In each of the three years following the balance sheet, (ii) after three through five years, (iii) after five through ten years, (iv) after ten through fifteen years, and (v) after fifteen years.

In addition, present separately the total amount of all such loans due after one year which have predetermined interest rates and floating or adjustable interest rates.

*Instructions.* 1. Scheduled principal repayments should be reported in the maturity category in which the payment is due.

2. Demand loans, loans having no stated schedule of repayments and no stated maturity, and overdrafts should be reported as due in one year or less.

3. Determinations of maturities should be based upon contract terms. However, such terms may vary due to the applicant's "roll-over policy," in which case the maturity should be revised as appropriate and the roll-over policy should be briefly discussed.

(7) Describe briefly the risk elements within the loan and investment portfolios including the applicant's customary procedures regarding delinquent loans. As of the end of each of the periods covered by the statements of operation required by item 14(b)(1) and as of the date of the latest statement of financial condition required by item 14(a), set forth in tabular form the amounts and categories of nonaccrual, past due, restruc-

tured, and potential problem loans (*see* Securities and Exchange Commission's Securities Act Industry Guide 3, section III C) and the ratio of such loans to total assets. Where the amount of real estate that has been in substance foreclosed, acquired by foreclosure, or by deed in lieu thereof is significant, include a brief description of the major properties and a statement as to the applicant's probable losses, if any, upon disposition of such properties.

(e) *Savings activities.* (1) State whether the maximum rate of interest which the applicant may pay is established by regulatory authorities. State that, in the event of liquidation of the applicant after conversion, savings account holders will be entitled to full payment of their accounts prior to payment to shareholders. Also indicate the percentage of total savings accounts which are from out-of-state sources, if such total is significant.

(2) Set forth in tabular form the amounts of time deposit accounts by categories of interest rates as of the dates of each balance sheet filed. Each interest-rate category should not be more than 200 basis points. As of the date of the latest balance sheet, set forth, in tabular form for each interest-rate category, the amounts of savings maturing during each of the three years following the balance sheet date and the total maturing thereafter.

(3) Disclose the weighted-average rate and general terms (as well as formal provisions for the extension of the maturity) of each category of short-term borrowings required by Balance Sheet Caption 14, § 563c.102, along with the maximum amount of borrowings in each category outstanding at any month-end during each period for which an end-of-period balance sheet is required. In addition, disclose the approximate average short-term borrowings outstanding during the period and the approximate weighted-average interest rate (and a brief description of the means used to compute such average) for such aggregate short-term borrowings. The disclosure required by this paragraph (3) need not be furnished as regards borrowings in each particular category when the aggregate amount of such borrowings at the balance sheet date does not exceed one percent of assets at that date. Notwithstanding this reporting threshold, if the weighted average of such borrowings outstanding during the year exceeds one percent of assets at year-end and significantly exceeds the amount of such borrowings at year-end, the disclosure called for by this paragraph (3) should be furnished. This information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders equity at the end of the period.

(f) *Federal regulation.* Describe briefly, to the extent not otherwise covered by other

items, Federal regulation of the applicant and the conduct of its operations. In particular, describe briefly the insurance of accounts and the general regulatory authority of the Federal Deposit Insurance Corporation, the general regulatory authority of the Office, and Federal regulatory capital requirements, the results of failure to meet those requirements, and the applicant's regulatory capital position in relation to those requirements. Also describe the assessment authority and requirements of the Federal Deposit Insurance Corporation, the Office, the Financing Corporation, and the Resolution Funding Corporation. In addition, describe briefly applicable liquidity requirements under section 4A of the Home Owners' Loan Act, as amended, the regulations thereunder, and State law. State the applicant's position with respect to those requirements.

(g) *Federal Home Loan Bank System.* Describe briefly the Federal Home Loan Bank System and state that the applicant is a member. Such description shall include

- (1) Limitations on borrowings;
- (2) Recent loan policies of the applicant's Federal Home Loan Bank and current interest rates; and
- (3) Federal Home Loan Bank stock purchase requirements and the applicant's position with respect to those requirements.

(h) *State savings association law.* If the applicant is converting to a State-chartered stock association, describe briefly applicable provisions of State law which have a material effect on the business of the applicant.

(i) *Federal and State taxation.* Describe briefly the Federal income tax laws applicable to the applicant including:

- (1) Permissible bad debt reserves;
- (2) The applicant's position with respect to the maximum bad debt reserve limitations as of the date of the latest statement of financial condition required under item 14(a);
- (3) Future increases in the effective income tax rate;
- (4) The date through which the applicant's Federal income tax returns have been audited by the Internal Revenue Service; and
- (5) The tax effect to the applicant of the payment of cash dividends on capital stock of the applicant after conversion.

Also describe briefly the State taxation of the applicant.

(j) *Competition.* Describe the material sources of competition for savings associations generally and indicate to the extent practicable the applicant's position in its principal lending and savings markets.

*Instruction.* In answering item 7(j) give to the extent known the association's savings and mortgage product market shares by county in its geographic market. Also indicate its rank and any material changes or trends in its competitive standing.

(k) *Office and other material properties.* (1) Furnish the location of the applicant's home

office and each existing and approved branch office and other office facilities (such as mobile or satellite offices). State the total net book value of all such offices as of the date of the latest statement of financial condition required by item 14(a). If any such office is leased, state the expiration dates of such leases.

(2) Describe briefly undeveloped land owned by the applicant, including location, net book value, and prospective use and holding period. If the applicant or a subsidiary owns or leases electronic data processing equipment principally for its own use, describe briefly such equipment indicating net book value if owned or the principal lease terms if leased.

(l) *Employees.* State the number of persons employed full time by the applicant including executive officers listed under item 5. State whether employees are represented by a collective bargaining group and whether the applicant's relations with its employees is satisfactory. Summarize briefly any loans, profit sharing, retirement, medical, hospitalization or other remuneration plans provided for employees not already included pursuant to item 6.

(m) *Service corporations.* Describe briefly the applicant's investment in any subsidiary and the major lines of business (including any joint ventures) of the subsidiary which are material to its operations.

(n) *Legal proceedings.* Furnish the information regarding legal proceedings required to be disclosed in a registration statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see item 103 of Regulation S-K, 17 CFR 229.103. Unless the context otherwise requires, the word "registrant" in that regulation shall refer to the applicant.

(o) *Additional information.* The Office may upon the request of applicant, and where consistent with the protection of account holders and others, permit the omission of any of the information required by this item or the furnishing in substitution therefor of appropriate information of comparable character. The Office may also require the furnishing of other information in addition to, or in substitution for, the information required by this item in any case where such information is necessary or appropriate for an adequate description of the applicant's business done or intended to be done.

#### Item 8. Description of the Plan of Conversion

(a) A statement to the following effect shall be inserted in the proxy statement immediately preceding the information required by this item: The Office of Thrift Supervision has given approval to the plan of conversion, subject to its approval by association members and the satisfaction of certain other conditions. However, such approval by the Office does not constitute a

recommendation or endorsement of the plan by the Office.

(b) The proxy statement shall contain a description of the plan of conversion. Such description shall contain the information required by paragraphs (c) through (j) of this item and such additional information as may be necessary to accurately describe the material provisions of the plan.

(c) Briefly describe the effects of conversion from a mutual association to a stock association including the following information:

(1) State that savings accounts of the applicant will not be affected by the conversion with respect to such matters as balances in the accounts and the extent of insurance of savings accounts by the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(2) State whether savings and borrowing members of the applicant will continue to have voting rights in the applicant after conversion, and describe any voting rights they will have;

(3) State the present liquidation rights of account holders and describe the liquidation account to be established and maintained by the applicant, including the conditions under which such account will be paid, the interest of eligible account holders and supplemental eligible account holders in such account and the formula by which such account will be adjusted;

(4) State that the rights and obligations of borrowers from the applicant will not be changed in any manner;

(5) State that capital stock to be sold by the applicant will not be insured by the Savings Association Insurance Fund or the Bank Insurance Fund, as the case may be;

(6) State that none of the assets of the applicant will be distributed in order to effect the conversion other than to pay expenses incident thereto; and

(7) State briefly the reasons why management is recommending the conversion, including any advantages to the community served by the applicant.

(d) With respect to the subscription rights of members, furnish the following information:

(1) The formula to be used for determining the subscription rights of account holders to purchase shares pursuant to § 563b.3(c) (2), (4), and (5);

(2) Any optional provisions included in the plan of conversion pursuant to § 563b.3(d) for the purchase of shares of capital stock, including the purchase priorities, limitation on total purchases, the total number of shares which may be purchased, and the formula for the allocation;

(3) The allocation formulas to be used in the event that there is an oversubscription of shares at any time during the sale of stock under the plan of conversion; and

(4) The use and time of the order forms with respect to the exercise of subscription rights.

(e)(1) Set forth on a per-share basis the estimated public offering price range of the shares of capital stock to be sold pursuant to the plan of conversion, except that an estimated price range is not required to be stated if the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion;

(2) State that the offering price will be the *pro forma* market value of such shares as determined by the association's management and the underwriter, as the case may be; and

(3) State that all of the shares are required to be sold.

(f) Unless the offering of stock is not to commence until after the meeting of association members to vote on the plan of conversion, discuss: (1) The earnings per share of the capital stock to be sold on a *pro forma* basis as of the most recent year-end and interim period required by item 14(b); and (2) the book value per share on a *pro forma* basis as of the most recent year-end and interim period required by item 14(a).

*Instructions:* 1. Earnings and book value per share shall be furnished without giving effect to the estimated net proceeds from the sale of the capital stock and then after giving effect to such proceeds, with all assumptions used clearly stated.

2. In computing *pro forma* earnings, the applicant shall use the arithmetic average of the (i) average yield on all interest-earning assets (item 7(d)(4)(i)(D)) and (ii) average rate paid on deposits (item 7(d)(4)(ii)(A)).

3. If significant changes in interest rates occur during the periods presented, the Office will consider permitting alternative computations proposed by an applicant that are properly supported.

4. An appropriate statement should be included which explains that the *pro forma* data should not be relied upon as indicative of the actual financial position or results of continuing operations that will be experienced by the applicant after its conversion.

(g) State the proposed commencement and expiration dates of the subscription period and describe any provisions in the plan of conversion related to the timing or extension of the subscription period. Also, state:

(1) That a maximum subscription price will be set forth in the offering circular used for offering of subscription rights;

(2) That the actual subscription price will be the public offering price;

(3) That the actual subscription price will not exceed the maximum subscription price shown on the order form; and

(4) That any difference between the maximum and actual subscription prices will be refunded unless the subscribers affirmatively elect to have the difference applied to the



purchase of additional shares of capital stock.

(h) Furnish the following information:

(1) Describe to the extent practicable the applicant's present intentions with respect to listing the capital stock on an exchange or otherwise providing a market for the purchase and sale of the capital stock in the future;

(2) Describe briefly the tax effect of the conversion both to the applicant and to the various classes of account holders receiving nontransferable subscription rights to purchase capital stock in the conversion;

(3) State that the plan of conversion is attached as an exhibit to the proxy statement (or will be made available on request if the summary proxy statement provided for by § 563b.6(c)(2) is being used) and should be consulted for further information.

(i)(1) State whether the plan of conversion provides for unsubscribed capital stock to be offered to the public through underwriters or directly by the converting association. If such is the case, provide the information to the extent known required by item 6 of Form OC and indicate the estimated timing of the proposed offering.

(2) State whether the plan of conversion provides for the purchase by any person or group of any insignificant residue of shares remaining at the conclusion of the offering.

(j) Furnish the following information in tabular form regarding proposed purchases of capital stock involving directors and officers of the applicant:

(1) State the total number of shares proposed to be purchased by all officers, directors and their associates as a group without naming them.

(2) As to each officer and director named in item 5(a), name him or her, state his or her position, and the number of shares proposed to be purchased by him or her.

(3) As to any officer, director or associate thereof who proposes to purchase 1 percent or more of the total number of shares of capital stock of the applicant to be outstanding, name him or her, state his or her position, and the number of shares proposed to be purchased by him or her.

(4) With respect to the information required by items (1), (2) and (3) of paragraph (j), indicate separately the number of shares proposed to be purchased in each offering category.

*Instructions.* With respect to the information requested as to associates of officers and directors, such information is required only to the extent known. In a case where such confirmation is not obtainable, only the number of shares which the associate is given subscription rights to purchase need be disclosed.

#### Item 9. Description of Capital Stock

(a) Furnish the information regarding capital stock of the applicant required to be disclosed in a registration statement filed with the Office under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In particular, see item 202 of Regulation S-K, 17 CFR 229.202. Unless the context otherwise requires, the term "registrant" in that regulation shall refer to the applicant.

(b) An undertaking should be included in the proxy statement that the applicant where practical will use its best efforts to encourage and assist a professional market maker in establishing and maintaining a market for the capital stock of the applicant.

(c) Outline briefly the trading market that is expected to exist for the capital stock following the conversion including the estimated number of market makers and stockholders, and the anticipated success of the applicant in listing the stock.

*Instructions.* Any discussion of the listing of the applicant's stock should include the basic requirements that must be met for such listing.

(d) If the rights evidenced by the capital stock will be materially limited or qualified by the rights of savings account holders or borrowers, include the information regarding the limitations or qualifications necessary to enable investors to understand the rights evidenced by the capital stock.

#### Item 10. Capitalization

Set forth in substantially the tabular form indicated below the dollar amounts of the capitalization of the applicant. Captions below may be modified as appropriate.

|                    | (A) Capitalization as of most recent balance sheet date | (B) Pro forma adjustments as a result of conversion | (C) Pro forma capitalization, after giving effect to the conversion |
|--------------------|---|---|---|
| Deposits           |   |   |   |
| FHL bank advances. |   |   |   |
| Other              |   |   |   |
| Borrowings         |   |   |   |
| Capital stock      |   |   |   |
| Preferred stock    |   |   |   |
| Paid-in capital    |   |   |   |
| Retained earnings: |   |   |   |
| Restricted         |   |   |   |
| Unrestricted       |   |   |   |
| Total.             |   |   |   |

*Instructions.* 1. With respect to capital stock, indicate in the table or in a footnote the total number of shares to be authorized,

the par or stated value of such shares, and the number of shares to be sold as part of the conversion.

2. With respect to the funds to be received by the applicant from the sale of its capital stock, indicate in the table the estimated total amount of funds to be obtained and in a footnote state the price per share used in making the estimate. The total amount and price per share shall be clearly identified as being estimates.

3. With respect to Column A, the applicant should use the most recent balance sheet date required by item 14.

#### Item 11. Use of New Capital

State the principal purposes for which the net proceeds to the applicant from the capital stock to be sold are intended to be invested or otherwise used and the approximate amount intended for each such purpose.

*Instruction.* Details of proposed investments are not to be given. There need be furnished, for example, only a brief statement of any investment or other activity of the applicant which will be affected materially by availability of the proceeds. Examples of such activities may include expanded secondary market activities, larger scale lending projects, loan portfolio diversification, increased liquidity investments, repayment of debt, additional branch offices and other facilities, service corporation investments, and acquisitions.

#### Item 12. New Charter, Bylaws, or Other Documents

Describe briefly any material differences between the provisions of the existing charter, bylaws, and any similar documents of the applicant and those which will take effect after conversion.

*Instruction.* This item requires only a brief summary of the provisions which are pertinent from both an investment standpoint and a voting standpoint. A complete legal description of the provisions referred to is not required and should not be given. Do not set forth the provisions verbatim; only a succinct resume is required.

#### Item 13. Other Matters

State that the applicant will register its capital stock under section 12(g) of the Securities Exchange Act of 1934, as amended, and that it will not deregister such stock for a period of three years. It should be noted that upon such registration the proxy rules, insider trading reporting and restrictions, annual and periodic reporting and other requirements of that Act will be applicable.

#### Item 14. Financial Statements

NOTES: 1. The following instructions specify the consolidated balance sheets, the con-

solidated statements of income, the consolidated statements of cash flows, and stockholders' equity required to be included in the proxy statement. Subpart A of part 563c governs the certification, form, and content of such financial statements, including the basis of consolidation.

2. If the applicant has previously used an audit period in connection with its certified financial statements which does not coincide with its fiscal year, such audit period may be used in place of any fiscal year requirement provided it covers a full twelve months' operations and is used consistently.

(a) *Consolidated balance sheets.* (1) There shall be furnished for the applicant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(2) If the latest balance sheets furnished under (1) of this paragraph are in excess of 135 days prior to the date of the Office's approval of the conversion, there shall be furnished an interim balance sheet as of a date within 135 days of such approval. This interim balance sheet need not be audited.

(b) *Consolidated statements of income and cash flows.* (1) There shall be furnished for the applicant and its subsidiaries and predecessors consolidated, audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent balance sheet furnished, except that for periods prior to July 15, 1988, statements of changes in financial position may be provided in lieu of statements of cash flows.

(2) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and cash flows shall be furnished. The interim financial statements may be unaudited.

(c) *Changes in stockholders' equity.* An analysis of the changes in each caption of stockholders' equity presented in the balance sheets shall be given in a note or separate statement. This analysis shall be presented in the form of a reconciliation of the beginning balance to the ending balance for each period for which an income statement is required to be furnished with all significant reconciling items described by appropriate captions.

(d) *Financial statements of business acquired or to be acquired.* There shall be furnished the information required by 17 CFR 210.3-05 and 210.11-01 to -03 regarding business acquired or to be acquired.

(e) *Separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.* There shall be furnished the information required by 17 CFR 210.3-09 regarding separate financial statements of subsidiaries not consolidated and 50-percent- or less-owned persons.

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(f) *Filing of other statements in certain cases.* The Office may, upon the request of the applicant, and where consistent with the protection of account holders and others, permit the omission of one or more of the statements herein required or the filing in substitution thereof of appropriate statements of comparable character. The Office may also require the inclusion of other statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of account holders and others.

### Item 15. Consents of Experts and Reports

(a) The proxy statement shall briefly describe all consents of experts filed pursuant to § 563b.8(p).

(b) The statement shall contain a report of the independent public accountants who have certified the financial statements and other matters in the statement.

*Instruction.* The instruction on item 12 shall apply to paragraph (a) of this item.

### Item 16. Attachments

There shall be attached to the proxy statement distributed to association members and others a copy of the applicant's plan of conversion as approved by the Office unless the following procedure is observed. The association may in the alternative set forth in the proxy statement that the plan of conversion will not be provided unless the recipient so requests within a specified period by means of a postage-paid postcard or other written communication.

[54 FR 49596, Nov. 30, 1989, as amended at 59 FR 22735, May 3, 1994]

## § 563b.102 Form OC—Offering Circulars.

### FORM OC

[Facing Sheet]

### OFFICE OF THRIFT SUPERVISION

1700 G Street, NW., Washington, DC 20552

### Offering Circular

(Exact name of applicant as specified in charter)

(Street address of applicant)

(City, State and Zip Code)

### Offering Circular Form

### Item 1. Information Required by and Use of Form OC

The offering circular shall be dated as of the date of its issuance. The offering circular shall contain substantially the same information required to be included in the proxy statement of the applicant distributed to association members to vote upon the plan of conversion. Information of the type required to be included in the proxy statement may be omitted from the offering circular only to the extent that it is clearly inapplicable. The offering circular may be in "wrap around" form with the proxy statement attached.

*Instructions.* 1. The term "offering circular" refers to both the offering circular for the subscription offering and the offering circular for the public offering through an underwriter or the direct community marketing by the converting savings association of the unsubscribed shares, unless otherwise indicated.

2. The offering circular shall include such information which the Chief Counsel or Deputy Chief Counsel for Securities and Corporate Structure, by interpretive release or otherwise, has deemed necessary to comply with this Form OC.

3. An offering circular for the subscription offering in "wrap around" form distributed to association members and other persons who have previously been furnished a copy of the proxy statement need not contain the proxy statement as an attachment provided such offering circular states that a copy of the proxy statement has previously been furnished to such persons and that an additional copy thereof will be furnished promptly upon request to the applicant (with the telephone number and mailing address of the applicant stated).

### Item 2. Additional Current Information Required

Each offering circular shall, as of its respective dates of issuance, include, to the extent available, the following additional current information to the extent that such information is not already included in the proxy statement:

(a) Information with respect to the vote of association members upon the plan of conversion and any other proposals considered at the meeting of members.

(b) Information with respect to any recent material developments in the business or affairs of the applicant.

(c) Information with respect to the trading market that is expected to exist for the capital stock following the conversion.

(d) Information, on the outside front cover page, summarizing the results of any separate subscription offering including the number of shares sold to eligible account holders,